

IN THE SENATE

SENATE BILL NO. 1106

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO CODE, TO PROVIDE THAT A COURT MAY ORDER RESTITUTION IN CERTAIN CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8003, IDAHO CODE, TO PROVIDE THAT UPON CONVICTION FOR CERTAIN OFFENSES A COURT MAY ORDER RESTITUTION FOR CERTAIN COSTS INCURRED, TO PROVIDE FOR THE DISTRIBUTION OF THE RESTITUTION AND TO DEFINE A TERM; AMENDING SECTIONS 37-2732 AND 37-2735A, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 37-2744 AND 37-2807, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-2808, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 57-816, IDAHO CODE, TO EXPAND THE DRUG ENFORCEMENT DONATION FUND TO INCLUDE DRIVING WHILE UNDER THE INFLUENCE; AND AMENDING SECTIONS 63-3067A AND 63-3067B, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES – PENALTY AND SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete, evidentiary testing:

(a) He is subject to a civil penalty of two hundred fifty dollars (\$250) for refusing to take the test;

(b) His driver's license will be seized by the peace officer and a temporary permit will be issued; provided, however, that no peace officer shall issue a temporary permit pursuant to

1 this section to a driver whose driver's license or permit has already been and is suspended
2 or revoked because of previous violations, and in no instance shall a temporary permit be
3 issued to a driver of a commercial vehicle who refuses to submit to or fails to complete
4 an evidentiary test;

5 (c) He has the right to request a hearing within seven (7) days to show cause why he
6 refused to submit to, or complete evidentiary testing;

7 (d) If he does not request a hearing or does not prevail at the hearing, the court shall
8 sustain the civil penalty and his driver's license will be suspended absolutely for one (1)
9 year if this is his first refusal and two (2) years if this is his second refusal within ten (10)
10 years; and

11 (e) After submitting to evidentiary testing he may, when practicable, at his own expense,
12 have additional tests made by a person of his own choosing.

13 (4) If the motorist refuses to submit to or complete evidentiary testing after the
14 information has been given in accordance with subsection (3) above:

15 (a) He shall be fined a civil penalty of two hundred fifty dollars (\$250) and his driver's
16 license or permit shall be seized by the peace officer and forwarded to the court and a
17 temporary permit shall be issued by the peace officer which allows him to operate a motor
18 vehicle until the date of his hearing, if a hearing is requested, but in no event for more
19 than thirty (30) days; provided, however, that no peace officer shall issue a temporary
20 permit pursuant to this section to a driver whose driver's license or permit has already
21 been and is suspended or revoked because of previous violations and in no instance shall
22 a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to
23 or fails to complete an evidentiary test;

24 (b) A written request may be made within seven (7) calendar days for a hearing before
25 the court; if requested, the hearing must be held within thirty (30) days of the seizure
26 unless this period is, for good cause shown, extended by the court for one (1) additional
27 thirty (30) day period. The court, in granting such an extension, may, for good cause
28 shown, extend the defendant's temporary driving privileges for one (1) additional thirty
29 (30) day period. The hearing shall be limited to the question of why the defendant did
30 not submit to, or complete, evidentiary testing, and the burden of proof shall be upon
31 the defendant; the court shall sustain a two hundred fifty dollar (\$250) civil penalty
32 immediately and suspend all the defendant's driving privileges immediately for one (1)
33 year for a first refusal and two (2) years for a second refusal within ten (10) years unless
34 it finds that the peace officer did not have legal cause to stop and request him to take the
35 test or that the request violated his civil rights;

36 (c) If a hearing is not requested by written notice to the court concerned within seven (7)
37 calendar days, upon receipt of a sworn statement by the peace officer of the circumstances
38 of the refusal, the court shall sustain a two hundred fifty dollar (\$250) civil penalty and
39 suspend the defendant's driving privileges for one (1) year for a first refusal and two
40 (2) years for a second refusal within ten (10) years, during which time he shall have
41 absolutely no driving privileges of any kind; and

42 (d) After submitting to evidentiary testing at the request of the peace officer, he may,
43 when practicable, at his own expense, have additional tests made by a person of his own
44 choosing. The failure or inability to obtain an additional test or tests by a person shall not
45 preclude the admission of results of evidentiary testing for alcohol concentration or for

the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any sustained civil penalty or suspension of driving privileges under this section or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A, Idaho Code; provided, that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual authorized in section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

(i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006, Idaho Code;

(ii) Vehicular manslaughter as provided in subsections (3)(a), (b) and (c) of section 18-4006, Idaho Code;

(iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or

(iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

(c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.

(d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings. The court may order restitution pursuant to the provisions of section 18-8003(2), Idaho Code.

(e) The withdrawal of the blood sample may be delayed or terminated if:

(i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or

(ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(8) Any written notice required by this section shall be effective upon mailing.

(9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

(11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred. If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the imposition, unless this period has been extended by the court for good cause shown, the prosecuting attorney representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest may be assessed against any person who fails to pay the civil penalty.

SECTION 2. That Section 18-8003, Idaho Code, be, and the same is hereby amended to read as follows:

18-8003. PERSONS AUTHORIZED TO WITHDRAW BLOOD FOR THE PURPOSES OF DETERMINING CONTENT OF ALCOHOL OR OTHER INTOXICATING SUBSTANCES AND RESTITUTION ORDERS. (1) Only a licensed physician, qualified medical technologist, registered nurse, phlebotomist trained in a licensed hospital or educational institution or other medical personnel trained in a licensed hospital or educational institution to withdraw blood can, at the order or request of a peace officer, withdraw blood for the purpose of determining the content of alcohol, drugs or other intoxicating substances therein. This limitation shall not apply to the taking of a urine, saliva or breath specimen. For purposes of this section: (a) the term "qualified medical technologist" shall be deemed to mean a person who meets the standards of a "clinical laboratory technologist" as set forth by the then current rules and regulations of the social security administration of the United States department of health and human services pursuant to subpart M of part 405, chapter III, title 20, of the code of federal regulation; and (b) the terms "phlebotomist" and "other medical personnel" shall be deemed to mean persons who meet the standards for the withdrawing of blood as designated and qualified by the employing medical facility or other employing entity of those persons.

(2) Upon conviction for a felony or misdemeanor violation under this chapter, except pursuant to sections 18-8001 and 18-8007, Idaho Code, or upon conviction for vehicular manslaughter pursuant to section 18-4006(3)(b), Idaho Code, the court may order restitution for

the reasonable costs incurred by law enforcement agencies to withdraw blood samples, perform laboratory analysis, transport and preserve evidence, preserve evidentiary test results and for testimony relating to the analysis in judicial proceedings, including travel costs associated with the testimony. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A "conviction" for purposes of this subsection means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

(3) The person tested may, at his own expense, have a person of his own choosing, who is authorized to make a test, administer an evidentiary test for alcohol concentration in addition to the one administered at the request of a peace officer.

SECTION 3. That Section 37-2732, Idaho Code, be, and the same is hereby amended to read as follows:

37-2732. PROHIBITED ACTS A – PENALTIES. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(A) a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, except as provided for in section 37-2732B(a)(3), Idaho Code, is guilty of a felony and upon conviction may be imprisoned for a term of years not to exceed life imprisonment, or fined not more than twenty-five thousand dollars (\$25,000), or both;

(B) any other controlled substance which is a nonnarcotic drug classified in schedule I, or a controlled substance classified in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars (\$15,000), or both;

(C) a substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars (\$10,000), or both;

(D) a substance classified in schedules V and VI, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars (\$5,000), or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(A) a counterfeit substance classified in schedule I which is a narcotic drug, or a counterfeit substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, fined not more than twenty-five thousand dollars (\$25,000), or both;

(B) any other counterfeit substance classified in schedule I which is a nonnarcotic drug contained in schedule I or a counterfeit substance contained in schedule III, is

guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars (\$15,000), or both;

(C) a counterfeit substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars (\$10,000), or both;

(D) a counterfeit substance classified in schedules V and VI or a noncontrolled counterfeit substance, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars (\$5,000), or both.

(c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

(1) Any person who violates this subsection and has in his possession a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than seven (7) years, or fined not more than fifteen thousand dollars (\$15,000), or both.

(2) Any person who violates this subsection and has in his possession lysergic acid diethylamide is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than five thousand dollars (\$5,000), or both.

(3) Any person who violates this subsection and has in his possession a controlled substance which is a nonnarcotic drug classified in schedule I except lysergic acid diethylamide, or a controlled substance classified in schedules III, IV, V and VI is guilty of a misdemeanor and upon conviction thereof may be imprisoned for not more than one (1) year, or fined not more than one thousand dollars (\$1,000), or both.

(d) It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this section shall deem those persons guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300) and not more than ninety (90) days in the county jail, or both.

(e) If any person is found to possess marijuana, which for the purposes of this subsection shall be restricted to all parts of the plants of the genus Cannabis, including the extract or any preparation of cannabis which contains tetrahydrocannabinol, in an amount greater than three (3) ounces net weight, it shall be a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than ten thousand dollars (\$10,000), or both.

(f) If two (2) or more persons conspire to commit any offense defined in this act, said persons shall be punishable by a fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

(g) (1) It is unlawful for any person to manufacture or distribute a "simulated controlled substance," or to possess with intent to distribute, a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000) and not more than one (1) year in the county jail, or both.

(2) It is unlawful for any person to possess a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars (\$300) and not more than six (6) months in the county jail, or both.

(h) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale simulated controlled substances. Any person who violates this subsection is guilty of a misdemeanor and shall be punished in the same manner as prescribed in subsection (g) of this section.

(i) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in section 37-2701(z), Idaho Code, in the course of professional practice or research.

(j) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

(k) Upon conviction of a felony or misdemeanor violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

SECTION 4. That Section 37-2735A, Idaho Code, be, and the same is hereby amended to read as follows:

37-2735A. DRUG HOTLINE FEE. In addition to any other penalties, a person convicted of a violation of this chapter shall be subject to an additional fine of ten dollars (\$10.00) to be deposited in the drug and driving while under the influence enforcement donation fund, as set forth in section 57-816, Idaho Code, to be used for the purposes designated in that section.

SECTION 5. That Section 37-2744, Idaho Code, be, and the same is hereby amended to read as follows:

1 37-2744. FORFEITURES. (a) The following are subject to forfeiture:

2 (1) All controlled substances which have been manufactured, distributed, dispensed,
3 acquired, possessed or held in violation of this act or with respect to which there has
4 been any act by any person in violation of this act;

5 (2) All raw materials, products and equipment of any kind which are used, or intended
6 for use, in manufacturing, compounding, processing, delivering, importing, or exporting
7 any controlled substances or counterfeit substances in violation of this act;

8 (3) All property which is used, or intended for use, as a container for property described
9 in paragraph (1) or (2) hereof;

10 (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended
11 for use, to transport, or in any manner to facilitate the transportation, delivery, receipt,
12 possession or concealment, for the purpose of distribution or receipt of property described
13 in paragraph (1) or (2) hereof, but:

14 (A) No conveyance used by any person as a common carrier in the transaction
15 of business as a common carrier is subject to forfeiture under this section unless it
16 appears that the owner or other person in charge of the conveyance is a consenting
17 party or privy to a violation of this act;

18 (B) No conveyance is subject to forfeiture under this section if the owner
19 establishes that he could not have known in the exercise of reasonable diligence
20 that the conveyance was being used, had been used, was intended to be used or
21 had been intended to be used in any manner described in subsection (a)(4) of this
22 section;

23 (C) A forfeiture of a conveyance encumbered by a bona fide security interest
24 is subject to the interest of the secured party if the security interest was created
25 without any knowledge or reason to believe that the conveyance was being used,
26 had been used, was intended to be used, or had been intended to be used for the
27 purpose alleged.

28 (5) All books, records, and research products and materials, including formulas,
29 microfilm, tapes, and data which are used, or intended for use, in violation of this act.

30 (6) (A) All moneys, currency, negotiable instruments, securities or other items easily
31 liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other
32 property described in paragraphs (2) and (3) hereof, found in close proximity to
33 property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of
34 this section or which has been used or intended for use in connection with the
35 illegal manufacture, distribution, dispensing or possession of property described in
36 paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section;

37 (B) Items described in paragraph (6)(A) above or other things of value furnished
38 or intended to be furnished by any person in exchange for a contraband controlled
39 substance in violation of this chapter, all proceeds, including items of property
40 traceable to such an exchange, and all moneys or other things of value used
41 or intended to be used to facilitate any violation of this chapter, except that no
42 property shall be forfeited under this paragraph to the extent of the interest of an
43 owner, by reason of any act or omission established by that owner to have been
44 committed or omitted without the knowledge or consent of that owner.

45 (7) All drug paraphernalia as defined by section 37-2701, Idaho Code.

(8) All simulated controlled substances, which are used or intended for use in violation of this chapter.

(9) All weapons, or firearms, which are used in any manner to facilitate a violation of the provisions of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the director, or any peace officer of this state, upon process issued by any district court, or magistrate's division thereof, having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal racketeering or civil forfeiture proceeding based upon a violation of this chapter;

(3) Probable cause exists to believe that the property is directly or indirectly dangerous to health or safety; or

(4) Probable cause exists to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(1) When property is seized under this section, the director or the peace officer who seized the property may:

(A) Place the property under seal;

(B) Remove the property to a place designated by it; or

(C) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) The peace officer who seized the property shall within five (5) days notify the director of such seizure.

(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted within thirty (30) days by the director or appropriate prosecuting attorney.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director, or appropriate prosecuting attorney, subject only to the orders and decrees of the district court, or magistrate's division thereof, having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the standard of proof shall be preponderance of the evidence.

(1) All property described in paragraphs (1), (7) and (8) of subsection (a) hereof shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

(2) When property described in paragraphs (2), (3), (4), (5) and (6) of subsection (a) hereof is seized pursuant to this section, forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such property is seized. The procedure governing such proceedings shall be the same as that prescribed for civil proceedings by the Idaho Rules of Civil Procedure. The court shall order the property forfeited to the director, or appropriate prosecuting attorney, if he determines that such property was used, or intended for use, in violation of this chapter, or, in the case of items

described in paragraph (6)(A) of subsection (a), was found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section.

(3) When conveyances, including aircraft, vehicles, or vessels are seized pursuant to this section a complaint instituting forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such conveyance is seized.

(A) Notice of forfeiture proceedings shall be given each owner or party in interest who has a right, title, or interest which in the case of a conveyance shall be determined by the record in the Idaho transportation department or a similar department of another state if the records are maintained in that state, by serving a copy of the complaint and summons according to one (1) of the following methods:

(I) Upon each owner or party in interest by mailing a copy of the complaint and summons by certified mail to the address as given upon the records of the appropriate department.

(II) Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the ~~last known~~ last known address.

(B) Within twenty (20) days after the mailing or publication of the notice, the owner of the conveyance or claimant may file a verified answer and claim to the property described in the complaint instituting forfeiture proceedings.

(C) If at the end of twenty (20) days after the notice has been mailed there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use, or intent to use, and shall order the property forfeited to the director, or appropriate prosecuting attorney, if such fact is proved.

(D) If a verified answer is filed, the forfeiture proceeding shall be set for hearing before the court without a jury on a day not less than thirty (30) days therefrom; and the proceeding shall have priority over other civil cases.

(I) At the hearing any owner who has a verified answer on file may show by competent evidence that the conveyance was not used or intended to be used in any manner described in subsection (a)(4) of this section.

(II) At the hearing any owner who has a verified answer on file may show by competent evidence that his interest in the conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section.

(III) If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

(IV) An owner, co-owner or claimant of any right, title, or interest in the conveyance may prove that his right, title, or interest, whether under a lien, mortgage, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order the conveyance released to the bona fide or innocent owner, purchaser, lienholder, mortgagee, or conditional sales vendor. The court may order payment of all costs incurred by the state or law enforcement agency as a result of such seizure.

(ii) If the amount due to such person is less than the value of the conveyance, the conveyance may be sold at public auction by the director or appropriate prosecuting attorney. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the conveyance. The proceeds from such sale shall be distributed as follows in the order indicated;

1. To the bona fide or innocent owner, purchaser, conditional sales vendor, lienholder or mortgagee of the conveyance, if any, up to the value of his interest in the conveyance.

2. The balance, if any, in the following order:

A. To the director, or appropriate prosecuting attorney, for all expenditures made or incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the conveyance, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

B. To the law enforcement agency of this state which seized the conveyance for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any conveyance seized under this act.

C. The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

(iii) In any case, the director, or appropriate prosecuting attorney, may, within thirty (30) days after judgment, pay the balance due to the bona fide lienholder, mortgagee or conditional sales vendor and thereby purchase the conveyance for use to enforce this act.

(e) When property is forfeited under this section, or is received from a federal enforcement agency, the director, or appropriate prosecuting attorney, may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public.

1 The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least
 2 one (1) publication in a newspaper published and circulated in the city, community or locality
 3 where the sale is to take place at least one (1) week prior to sale of the property. The proceeds
 4 from such sale shall be distributed as follows in the order indicated:

5 (A) To the director, or prosecuting attorney on behalf of the county or city law
 6 enforcement agency, for all expenditures made or incurred in connection with
 7 the sale, including expenditure for any necessary repairs, maintenance, storage or
 8 transportation, and for all expenditures made or incurred in connection with the
 9 forfeiture proceedings including, but not limited to, expenditures for witnesses'
 10 fees, reporters' fees, transcripts, printing, traveling and investigation.

11 (B) To the law enforcement agency of this state which seized the property for
 12 all expenditures for traveling, investigation, storage and other expenses made or
 13 incurred after the seizure and in connection with the forfeiture of any property
 14 seized under this act.

15 (C) The remainder, if any, to the director for credit to the drug and driving while
 16 under the influence enforcement donation fund or to the appropriate prosecuting
 17 attorney for credit to the local agency's drug enforcement donation fund.

18 (3) Take custody of the property and remove it for disposition in accordance with law; or
 19 (f) (1) The director or any peace officer of this state seizing any of the property described
 20 in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory
 21 to be made and maintain custody of the same until all legal actions have been exhausted
 22 unless such property has been placed in lawful custody of a court or state or federal law
 23 enforcement agency. After all legal actions have been exhausted with respect to such
 24 property, the property shall be surrendered by the court, law enforcement agency, or
 25 person having custody of the same to the director to be destroyed pursuant to paragraph
 26 (2) hereof. The property shall be accompanied with a written inventory on forms
 27 furnished by the director.

28 (2) All property described in paragraphs (1) and (2) of subsection (a) which is seized or
 29 surrendered under the provisions of this act may be destroyed after all legal actions have
 30 been exhausted. The destruction shall be done under the supervision of the supervisory
 31 drug analyst of the Idaho state police, a representative of the office of the director and
 32 a representative of the state board of pharmacy. An official record listing the property
 33 destroyed and the location of destruction shall be kept on file at the office of the director.
 34 Except, however, that the director of the Idaho state police or his designee may authorize
 35 the destruction of drug or nondrug evidence, or store those items at government expense
 36 when, in the opinion of the director or his designee, it is not reasonable to remove or
 37 transport such items from the location of the seizure for destruction. In such case, a
 38 representative sample will be removed and preserved for evidentiary purposes and, when
 39 practicable, destroyed as otherwise is in accordance with this chapter. On-site destruction
 40 of such items shall be witnessed by at least two (2) persons, one (1) of whom shall be the
 41 director or his designee who shall make a record of the destruction.

42 (g) Species of plants from which controlled substances in schedules I and II may be
 43 derived which have been planted or cultivated in violation of this act, or of which the owners or
 44 cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to
 45 the state.

(h) The failure, upon demand by the director, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The director shall have the authority to enter upon any land or into any dwelling pursuant to a search warrant, to cut, harvest, carry off or destroy such plants described in subsection (g) hereof.

SECTION 6. That Section 37-2807, Idaho Code, be, and the same is hereby amended to read as follows:

37-2807. PERSONAL PROPERTY – RIGHTS OF THIRD PARTIES. (1) Within five (5) days of any of the events specified in section 37-2806, Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title or interest in any of such personal property according to one (1) of the following methods:

(a) Upon each co-owner or party in interest in a titled motor vehicle, aircraft or other conveyance, by mailing notice by certified mail to the address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained.

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement.

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the ~~last known~~ last known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance was being used, had been used or was intended to be used for the purposes described in section 37-2801, Idaho Code.

(b) A co-owner, or claimant of any right, title, or interest in the property may prove that his right, title or interest, whether under a lien, mortgage, security agreement, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used or was intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney general, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee or secured party of the property, if any, up to the value of his interest in the property.

2. The balance, if any, in the following order:

(A) To the attorney general or appropriate prosecuting attorney, for all expenditures made or incurred by them in connection with the sale, including expenditure for any necessary repairs, storage or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this chapter.

(C) The remainder, if any, to the director of the Idaho state police for credit to the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code, or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

3. Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

4. In any case, the attorney general, or appropriate prosecuting attorney, may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party or conditional sales vendor and thereby purchase the property for use to enforce this chapter.

SECTION 7. That Section 37-2808, Idaho Code, be, and the same is hereby amended to read as follows:

37-2808. REAL PROPERTY – RIGHTS OF THIRD PARTIES. (1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to

forfeiture, by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of this notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 37-2804, Idaho Code. The request shall be served in the same manner as complaints subject to the Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) A co-owner, or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed of trust or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged;

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used, or had been used in any manner in violation of the provisions of section 37-2801, Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee or beneficiary of the real property, if any, up to the value of his interest in the real property.

(ii) The balance, if any, in the following order:

1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the director of the Idaho state police for credit to the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

SECTION 8. That Section 57-816, Idaho Code, be, and the same is hereby amended to read as follows:

57-816. DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT DONATION FUND. (1) There is hereby created in the state operating fund the drug and driving while under the influence enforcement donation fund. Moneys in the fund may be appropriated only for programs designed to control or eliminate illicit drug traffic or to enforce statutory provisions related to driving while under the influence, and for law enforcement functions associated with such control or enforcement.

(2) Separate and apart from any other moneys in the fund, moneys deposited in the fund pursuant to section 37-2735A, Idaho Code, shall be used exclusively to support a twenty-four (24) hour anonymous hotline and reward system, including any advertising for and about such system, for the reporting of drug violations.

SECTION 9. That Section 63-3067A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067A. DESIGNATION BY INDIVIDUALS – TRUST ACCOUNTS. (1) Every individual who:

(a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) of this section; or

(b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

- (a) The fish and game set-aside account created by section 36-111, Idaho Code;
- (b) The Idaho ag in the classroom account created by section 57-815, Idaho Code;
- (c) The drug and driving while under the influence enforcement donation ~~account~~ fund created by section 57-816, Idaho Code;
- (d) The children's trust fund created by section 39-6007, Idaho Code;
- (e) The special olympics Idaho fund created in section 57-823, Idaho Code;
- (f) The Idaho guard and reserve family support fund created by section 57-820, Idaho Code; and
- (g) The American red cross of greater Idaho fund created in section 57-821, Idaho Code.

(4) Prior to the distribution of funds into any of the trust accounts specified in subsection (3) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

SECTION 10. That Section 63-3067B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067B. DESIGNATION BY INDIVIDUALS – TRUST ACCOUNTS. (1) Every resident individual who:

- (a) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (3) below; or
- (b) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (3) of this section.

(2) A designation under subsection (1) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(3) The trust accounts authorized to receive moneys designated under subsection (1) of this section are:

- (a) The fish and game set-aside account created in section 36-111, Idaho Code;
- (b) The Idaho ag in the classroom account created in section 57-815, Idaho Code;
- (c) The drug and driving while under the influence enforcement donation ~~account~~ fund created in section 57-816, Idaho Code;
- (d) The children's trust fund created in section 39-6007, Idaho Code;
- (e) The special olympics Idaho fund created in section 57-823, Idaho Code;
- (f) The Alzheimer's disease services account created in section 57-819, Idaho Code;
- (g) The community forestry trust account created in section 38-136, Idaho Code;
- (h) The American red cross of greater Idaho fund created in section 57-821, Idaho Code, which donation shall be ten dollars (\$10.00) if made; and
- (i) The veterans support fund created in section 65-209, Idaho Code.

1 (4) Prior to the distribution of funds into any of the trust accounts specified in subsection
2 (3) of this section from the refund account, the state tax commission shall retain funds for the
3 commission's costs for collecting and administering the moneys in the accounts as follows:
4 three thousand dollars (\$3,000) from each account for start-up costs during the first year
5 of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys
6 remitted to each account during the fiscal year, whichever is less, from each account during
7 each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.